

THE HONOURABLE SRI JUSTICE V.ESWARAIAH

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WRIT PETITION No :21654 of 2007

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DATED:11-10-2007

BETWEEN:

Pathipati Nagaiah.

..... PETITIONER

AND

The District Panchayat Officer,
Ongole,
Prakasam District & 3 others.

.....RESPONDENTS

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ORDER:

Heard learned counsel appearing for the petitioner; learned Government Pleader for Panchayat Raj & Rural Development, and the learned Government Pleader for Revenue appearing for the respondents.

2. Petitioner seeks a writ of certiorari calling for the record pertaining to the order passed by the 1st respondent herein in Roc.No.1071/2007(P)/A2, dated 25-09-2007, and quash the same.

3. Petitioner is an elected Sarpanch of Chintagumpalle, P.C.Palle mandal, Prakasam District in the election conducted in the month of August, 2006. According to the petitioner he has got all four children prior to the date of prohibition to have more than two children i.e., 30-05-1994. As per the amended provision under Section 19(3) of the A.P.Panchayat Raj Act,1994 (for brevity, 'the Act') there is prohibition to have more than two children within one month from

30-04-1994 and therefore, the prohibited date to have more than three children is 30-05-1994. It is the case of the petitioner that all his four children were born prior to

08-05-1995 and the last child was also born on 08-05-1995 and therefore, the prohibition to have more than two children before 30-05-1994 does not come in the way of the petitioner. While so, the show cause notice, dated 18-05-2007, has been issued as to why the petitioner shall not be disqualified for having more than two

children and that the petitioner has got a child after the prohibited date in addition to three children. Petitioner submitted an application stating that the date of birth of the second child is 20-08-1990; third child is 12-02-1993; and the fourth child is 08-05-1995 and the amended Act came into force after expiry of one year from 30-05-1994. It is stated that after the prohibited date no child was born to the petitioner, but the 1st respondent-District Panchayat Officer by the impugned proceedings in Roc.No.1071/07(P)A2, dated 25-09-2007, held that as per the Births and Deaths register there is an entry that the fourth child was born to the petitioner on 10-11-1995, but however as stated by the petitioner on 29-05-1995. Accordingly, petitioner was disqualified to continue as a Sarpanch under Section 19(3) of the Act.

4. Even assuming that the fourth child was born on 10-11-1995 i.e., after the prohibited date of 29-05-2005, the competent authority to decide the question of disqualification is only the District Judge under Section 22 of the Act. Therefore, I am of the opinion that the 1st respondent has no power or authority to disqualify the petitioner to continue as Sarpanch of the said village. The impugned order shall be treated as only an intimation that he has incurred disqualification and if that be so, it is for the concerned person or authority to apply to the District Judge under Section 22 of the Act to decide the question of disqualification. As the petitioner disputed the question of disqualification it is for the concerned person or authority to apply to the District Judge to decide the question of disqualification under Section 22 of the Act.

5. Having regard to the facts and circumstances of the case, Writ Petition is allowed setting aside the operative portion of the

order of the 1st respondent-District Panchayat Officer, in holding that the petitioner incurred disqualification to continue as a Sarpanch. However, in view of the said order, it is open for any person or authority to apply to the District Judge to decide the question of disqualification of the petitioner. No order as to costs.

V.ESWARAIAH,J

11th October, 2007.

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